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EXAMINER

BOMBERG, KENNETH

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/573,124	<b>Applicant(s)</b> BROUWER, MARKUS FRANCISKUS	
	<b>Examiner</b> KENNETH BOMBERG	<b>Art Unit</b> 3754	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 13-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 June 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because:

In Figs. 2-3, the depiction of the configuration of the interface between the air inlet valve (34) cylindrically wall and the unlabeled wall forming the outside of the air compression chamber is inconsistent between the right and left sides of the drawing. It appears that the right and left side depictions should be essentially mirror images. The left side depiction appears to be correct and the right side appears to be in error.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required (if appropriate) in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

2. The attempt to incorporate subject matter into this application by reference to International Patent Application WO 02/42005 is ineffective because the incorporation statement omits the word “reference” together with “incorporate(e)” as required by 37 CFR 1.57 (b)(1). Further, reference to Patent Application NL 1022633 should be appropriately made by a statement such as “incorporated by reference” to avoid any ambiguity as to the intent to incorporate by reference.

3. The incorporation of essential material in the specification by reference to an unpublished U.S. application, foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference, if the material is relied upon to overcome any objection, rejection, or other requirement imposed by the Office. The amendment must be accompanied by a statement executed by the applicant, or a practitioner representing the applicant, stating that the material being inserted is the material previously incorporated by reference and that the amendment contains no new matter. 37 CFR 1.57(f).

4. The incorporation by reference will not be effective until correction is made to comply with 37 CFR 1.57(b), (c), or (d). If the incorporated material is relied upon to meet any outstanding objection, rejection, or other requirement imposed by the Office, the correction must be made within any time period set by the Office for responding to the objection, rejection, or other requirement for the incorporation to be effective. Compliance will not be held in abeyance with respect to responding to the objection, rejection, or other requirement for the incorporation

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to be effective. In no case may the correction be made later than the close of prosecution as defined in 37 CFR 1.114(b), or abandonment of the application, whichever occurs earlier.

Any correction inserting material by amendment that was previously incorporated by reference must be accompanied by a statement that the material being inserted is the material incorporated by reference and the amendment contains no new matter. 37 CFR 1.57(f).

5. A copy of the material incorporated by reference is required per 37 CFR 1.57(e), the material must be accompanied by a statement that the copy supplied consists of the same material incorporated by reference in the referencing application. With respect to application NL 1022633, a certified translation of the published application is also required to insure that the incorporating amendment is in compliance with the first paragraph of 35 USC 112.

### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 13-30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims recite a liquid pump and an air pump as well as foam forming elements which are not adequately described in the written description to make and use the invention as claimed. The specification makes an

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improper incorporation to International Patent Application WO 02/42005 and Patent Application NL 1022633 to provide enablement for this essential material. Since the incorporation is improper, the specification lacks enablement.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 13-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Reference to Claim 13

In line 1, “particularly suitable” is indefinite.

In line 9, the term “adjacent” within the context of the claim is a relative term which renders the claim indefinite. The term “adjacent” is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Specifically, it is unclear how close the two structures need to be to constitute “adjacent”.

In line 9, the claim is unclear as to which structure “formed by” makes reference.

In line 10, “the liquid flow” lacks antecedent basis, further, it is unclear which liquid flow the flexible wall needs to project substantially transversely to.

In Reference to Claim 14

In line 2, it is unclear if “in flow direction” is making reference to “the liquid flow” in claim 13, further it is unclear to which flow direction reference is being made.

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In Reference to Claim 17

In line 1-2, “the liquid chamber” lack antecedent basis.

In Reference to Claim 18

In line 1, “the static situation” lacks antecedent basis.

In line 2, “the central outlet opening” of the mixing chamber lacks antecedent basis.

In Reference to Claim 20-22

In line 1, “the central opening” and “the liquid chamber” lack antecedent basis.

In Reference to Claim 24

In line 1, “foam-toning” appears to be a typographical error, and in line 2 “the foam flowing through the outflow channel” lacks antecedent basis.

In lines 2-3, it is unclear if this claim is referencing both foam forming elements disclosed as screens (28 and 30).

In Reference to Claim 25

In line 2, it is unclear if “in the flow direction” is making reference to “the liquid flow” in claim 13, further it is unclear to which flow direction reference is being made.

It is also unclear what “further foam-forming element” is being described as being before the foam-forming element in the outflow channel; the foam forming element in the outlet channel (28) appears to be the first of the elements.

In Reference to Claim 26

In line 2, it is unclear if “in the flow direction” is making reference to “the liquid flow” in claim 13, further it is unclear to which flow direction reference is being made.

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In lines 2-3, the limitation “or the foam-forming elements in the outflow channel” is not understood since this is already required by claim 23 from which these claims depend.

In Reference to Claim 27-28

In line 2, it is unclear if “in flow direction” is making reference to “the liquid flow” in claim 13, further it is unclear to which flow direction reference is being made.

In lines 2-3, the limitation “or the foam-forming elements in the outflow channel” is not understood since this is already required by claim 23 from which these claims depend.

In Reference to Claim 29

In line 1, “the final foam-forming element” lacks antecedent basis.

In lines 1-2, it is unclear if “in flow direction” is making reference to “the liquid flow” in claim 13, further it is unclear to which flow direction reference is being made.

Claim 29 as dependent on claim 26 makes it unclear if “the final foam-forming element” is directed to a previous “foam-forming element” or a third “foam-forming element”.

In Reference to Claim 13

In line 11, the term “adjacent” within the context of the claim is a relative term which renders the claim indefinite. The term “adjacent” is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Specifically, it is unclear how close the two structures need to be to constitute “adjacent”.



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In line 11, the claim is unclear as to which structure “formed by” makes reference.

In line 12, “the liquid flow” lacks antecedent basis, further, it is unclear which liquid flow the flexible wall needs to project substantially transversely to.

THE CLAIMS HAVE BEEN REJECTED ON PRIOR ART AS BEST UNDERSTOOD IN VIEW OF THE 35 USC 112 SECOND PARAGRAPH ERRORS NOTED ABOVE.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 13-16, 19-20, 23-28 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent Application Publication No. 2002/0056730 to ven de Heijden (ven de Heijden).

ven de Heijden teaches:

In Reference to Claims 13 and 30

A dispenser assembly (Fig. 1) consisting:

a liquid container (2) and

a dispenser (3) wherein the dispenser is formed by

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a liquid pump (4) provided with an inlet (15) having an inlet valve (16) and an outlet (annular area at upper end of non return valve 18) having an outlet valve (18),

an air pump (7) provided with an inlet (23) having an inlet valve (21) and an outlet (areas a directly above and below lip 22) having an outlet valve (22),

a mixing chamber (25) which is in communication with the outlet of each pump (see Fig. 1), and

a dispensing part (10) provided with an outflow channel (12) with an outflow opening (11), wherein the outflow channel is in communication with the mixing chamber (see Fig. 1), characterized in that the outlet valve (22) of the air pump (7) is adjacent (it is close to) to the outlet (annular area at upper end of non return valve 18) of the liquid pump (4) and formed by a flexible wall (annular resilient sealing lip 22) projecting substantially transversely of the liquid flow (see Fig. 1 it is transverse to the liquid flow passing vertically upward through the liquid pump chamber 5).

#### In Reference to Claim 14

The annular area between the top of the liquid piston pump (6) and the frustoconical head at the top of the non return valve (18) comprises a liquid chamber “after the outlet valve of the liquid pump” and has a central opening (at top of liquid pump piston 6) which debouches in the mixing chamber (25).

#### In Reference to Claims 15-16

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The mixing chamber (25) has a central outlet (outlet with smaller diameter in horizontal wall) which debouches in the outflow channel (12) of the dispensing part (10).

In Reference to Claims 19-20

The central opening (at top of liquid pump piston 6) of the liquid chamber is in open communication with the outflow channel (12) of the dispensing part.

In Reference to Claims 23-28

A foam-forming element having two meshes (13) is arranged in the outlet channel (12) which appears to meet these claim limitations as best understood.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over van de Heijden in view of US Patent No. 4,932,567 to Tanabe et al. (Tanabe).

Van de Heijden teaches the dispenser of claim 26 (see rejection of claim 26 above) but does not teach a final foam-forming element as seen in the flow direction is arranged in the outflow opening.

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Tanabe teaches a final foam-forming element (Fig. 2; 35) as seen in the flow direction is arranged in the outflow opening.

It would have been obvious to one having ordinary skill in the art at the time of the invention to have included the final foam-forming element as seen in the flow direction arranged in the outflow opening of Tanabe in the dispenser of van de Heijden in order to obtain a desired sized foam as explicitly taught by Tanabe (col. 4, lines 5-21).

*Allowable Subject Matter*

14. Claims 17, 18, 21, and 22 would be allowable (**if claims 17 and 21 were dependent from claim 14 rather than 13**) and rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

*Conclusion*

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art listed on the attached PTO-892 have been included because they are generally representative of the prior art pump foam dispensing devices.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KENNETH BOMBERG whose telephone number is (571)272-4922. The examiner can normally be reached on Monday-Thursday and alternative Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KB

/Kenneth Bomberg/  
Primary Examiner, Art Unit 3754